

NOTICE OF PROPOSED RULE ADOPTION

STATE OF MISSISSIPPI MS State Department of Health

MS State Department of Health

c/o Sam Dawkins

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Email Address

Specific Legal Authority Authorizing the promulgation
of Rule: Mississippi Code Section 41-7-185

Reference to Rules repealed, amended or suspended by
the Proposed Rule:

Mississippi Department of Health – Certificate of Need
Manual (August 12, 2006)

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

Revision of the Mississippi Department of Health Certificate of Need Manual to reflect statutory limitation on Certificate of
Need maximum processing fee.

This rule is proposed as a ☒ Final Rule, and/or a ☐ Temporary Rule (Check one or both boxers as applicable.)

Persons may present their views on the proposed rule by addressing written comments to the agency at the above address. Persons making comments should include their name and address, as well as other contact information, and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Oral Proceeding (Check one box below):

- ☒ An oral proceeding is scheduled on this rule on Date: 10/05/2006 at Time: 10:30 a.m. at
Location: Mississippi Department of Health, Osborne Building, Room 150, 570 East Woodrow Wilson,
Jackson, Mississippi 39215.

If you wish to be heard and present evidence at the oral proceeding you must make a written request to the agency at the above address at least five (5) days prior to the proceeding to be placed on the agenda. The request should include your name, address, telephone number as well as other contact information; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

- ☐ An oral proceeding is not scheduled on this rule. Where an oral proceeding is not scheduled, an oral proceeding will be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address and telephone number of the person(s) making the request; and if you are an agent or attorney, the name, address and telephone number of the party or parties you represent.

Economic Impact Statement (Check one box below):

- ☒ The agency has determined that an economic impact statement is not required for this rule, or
☐ The concise summary of the economic impact statement required is attached.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Date Rule Proposed: September 15, 2006

Proposed Effective Date of Rule: November 11, 2006

Sam Dawkins, Director of Office of Health Policy and Planning

Printed Name/Title of Person Submitting Rule for Filing

Signature

Title 15 - MISSISSIPPI DEPARTMENT OF HEALTH
Part IX – Office of Health Policy and Planning
Division of Health Planning and Resource Development

CON

Subpart 91 - Certificate of Need Review Manual

Revised: August 12, 2006

Index of Proposed Changes

Description	Page
Decrease maximum CON processing fee from \$40,000 to \$25,000. [Chapter 3, Subsection 112.01]	33
Decrease maximum CON processing fee for processing cost overrun requests from \$40,000 to \$25,000. [Chapter 6, Subsection 103.01]	55

Title 15 - Mississippi Department of Health

Part IX – Office of Health Policy and Planning

Subpart 91 – Planning & Resource Development

112 Certificate of Need Processing Fee

112.01 The amount of the fee to be assessed is determined by the following formula:

$$\text{CON Fee} = 0.50 \times 1\% \text{ of proposed capital expenditure}$$

Should the capital expenditure in the CON application differ from that in the notice of intent, the applicant must adjust the fee payment to conform to the fee stated in the CON application, being certain to capitalize only those increments of the total expenditure proposed which are appropriate.

Fee payment shall accompany the CON application and is payable to the Mississippi Department of Health by check, draft, or money order. The minimum fee shall not be less than \$1,000, and the maximum fee shall not exceed ~~\$40,000~~ **\$25,000**.

When a CON application is received by the Department, the capital expenditure will be determined and the fee based on that amount. If the applicant has submitted overpayment of the CON fee as determined by the Department, the amount of the overpayment will be refunded. If partial payment of the CON fee has been submitted, the balance due must be received within 15 days' of receipt of partial payment due to the Department. The assessed CON fee, once paid, shall be non-refundable.

No application shall be deemed complete for the purpose of review until the required fee is received by the State Department of Health.

No filing fee shall be required for:

1. Any application submitted by an agency, department, institution, or facility which is operated, owned, and/or controlled by the State of Mississippi and which receives operating and/or capital expenditure funds solely by appropriations from the Legislature of the State; or
2. Any application submitted by a health care facility for repairs or renovation determined by the Health Facilities Licensure and Certification Division of the Department, in writing, to be necessary to avoid revocation of license and/or loss of certification

for participation in the Medicaid and/or Medicare Programs. Any proposed expenditure in excess of the amount determined by the Department to be necessary to accomplish the stated purpose shall be subject to fee requirements previously detailed.

103 Cost Overrun

- 103.01 Changes in capital expenditure not associated with substantive construction or service changes require application for a cost overrun approval. It is expected that each applicant will accurately and completely represent the cost associated with the project, so that when a CON is issued, a maximum capital expenditure is authorized.

In those cases where the expenditure maximum established by the Certificate of Need is exceeded, the applicant is required to request cost overrun approval. The following procedures shall apply to cost overrun applications.

1. The request for cost overrun shall be made in accordance with the cost overrun format.
 - a. For construction projects, a revised estimate signed by an architect licensed to practice in Mississippi or a contractor authorized by law to do business in Mississippi shall accompany the request for cost overrun. The request shall include a description of the method used to determine the revised cost estimate and the justification for each line item in the budget for which a cost overrun is requested. In addition to the above, a revised capital expenditure budget outlining all costs associated with the project and a copy of any bid quotations will be submitted.
 - b. In cost overrun requests for purchase of capital equipment, an official price quotation from the vendor or the manufacturer is required.
 - c. Cost overrun requests for construction projects shall be compared with national construction cost data as published in the latest edition of Building Construction Cost Data, Robert S. Means Co., Inc., Kingston, Massachusetts, or other bona fide reference.

Any cost overrun on a construction or a renovation project which locates cost in or above the upper one-fourth range for construction or renovation cost in the U.S. shall require additional documentation to explain the reasons.

- d. Cost overrun requests which result in part or in whole from the requirement of the licensure and certification authority of the State shall be given special consideration. Appropriate documentation from the licensing and/or certification authority shall be submitted with the request.

- e. The amount of the fee to be assessed on cost overruns will be calculated at $0.50 \times 1\%$ of the additional capital expenditure or \$1,000, whichever is greater.

However, if the original capital expenditure required the maximum fee of ~~\$40,000~~ \$25,000 and the cost overrun does not contain a substantial change in construction, renovation, addition of services or purchase of equipment, the minimum fee of \$1,000 will be required.

- 2. For any proposal in which the estimated or actual cost exceeds the amount originally approved, a review by the State Health Officer shall be required.